

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5851 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

GERTRUDE E. HEALY
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-287

FORMERLY BENEFIT DECISION No. 5851
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S.S.A. No.

PACIFIC TELEPHONE AND
TELEGRAPH COMPANY
(Appellant-Employer)

The above-named employer on October 2, 1951, appealed from the decision of a Referee (LA-45473) which held that the claimant was not subject to disqualification under the provisions of Section 58(a)(1) of the California Unemployment Insurance Act /now section 1256 of the Unemployment Insurance Code/. The Appeals Board granted the request of the employer to present oral argument and oral arguments on behalf of both the employer and the claimant was heard on December 10, 1951, in Los Angeles, California.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant was last employed for approximately three and a half years as a local operator by the appellant-employer. She last worked on July 2, 1951, and resigned her employment on August 6, 1951, under the circumstances hereinafter set forth. The claimant's only prior work experience consists of three months as a cashier.

On August 7, 1951, the claimant registered for work as a factory trainee and filed a claim for benefits in the Glendale Office of the Department of Employment. On August 21, 1951, the Department, after receiving information from the appellant-employer, issued two determinations. The first held that the claimant had left her most recent employment with good cause and that the claimant was not subject to disqualification under Section 58(a)(1) of the Act /now section 1256 of the code/, but that the claimant was not available for work and was ineligible for benefits for an indefinite period commencing August 7, 1951, under the provisions of Section 57(c) of the Act /now section 1253(c) of the code/. The second determination held the claimant ineligible for benefits for one week commencing August 7, 1951, on the ground that she had made an insufficient search for work in her own behalf within the meaning of Section 57(e) of the Act /now section 1253(e) of the code/. The claimant did not appeal either determination but the employer appealed from that portion of the first determination which held that the claimant had left her most recent work with good cause within the meaning of Section 58(a)(1) of the Act /now section 1256 of the code/. A Referee affirmed the Department's determination that the claimant had left her work with good cause.

The claimant did not work after July 2, 1951, due to nervousness. She was examined by her personal physician on July 6, 1951, and he certified that she was unable to work due to extreme nervousness and that she should be able to return to work in September, 1951. This certificate of the claimant's physician was submitted to the claimant's employer in explanation of her absence. The claimant was examined by the employer's physician on July 10, and he reported that: "She may benefit by two weeks' disability." Under date of July 30, 1951, the claimant's physician stated: "I advise that above patient cease entirely the type of work that she has had as it has resulted in a severe nervous condition." This statement was not submitted to the claimant's employer.

During the period July 3, through August 6, 1951, the claimant continued to receive her full salary and was entitled to continue to receive her full salary if she continued disabled for a total of thirteen weeks

and, in addition, was entitled to half salary for an additional nine weeks. The claimant believed that her work was making her nervous and also had "outside problems which did not help too much." The claimant resigned her employment on August 6, 1951 because "I was worrying about when I was going to go back" and "to make my mind completely relaxed so I wouldn't even have to think about it."

The employer has an established policy granting leaves of absence due to illness and the claimant was aware of such policy but did not request a leave. The employer also has an established procedure for effecting transfers of employees from one type of work to another. The claimant was aware of this procedure but did not attempt to effect a transfer because other employees with whom she had discussed the matter had not satisfactorily performed the duties of the positions to which they were transferred. The employer had many jobs other than operating for which the claimant was qualified and for which the employer would have considered her had she indicated any inability to return to operating or had she requested a transfer.

As of September 21, 1951, the date of the hearing before the Referee, the claimant was still unable to work and had filed a claim for disability benefits. As of December 10, 1951, the date of the oral argument before this Board, the claimant still considered herself unable to work.

REASON FOR DECISION

Section 58 of the Unemployment Insurance Act /now section 1256 of the code⁷ provides in part as follows:

"(a) An individual shall be disqualified for benefits if:

"(1) He has left his most recent work voluntarily without good cause, if so found by the commission; . . ."

The term "good cause" as used in Section 58(a)(1) of the Unemployment Insurance Act /now section 1256 of the code/ can only be broadly defined and is a circumstance which necessarily must be determined on the facts of each case. If the facts disclose a real, substantial, and compelling reason for leaving employment of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action, then there is good cause for such leaving within the meaning of Section 58(a)(1) of the Act /now section 1256 of the code/ (Benefit Decision No. 5686).

In the instant case, the claimant was employed by a large employer which utilized employees in many occupations and had a regular procedure for shifting employees from one occupation to another on the basis of either personal preferences or inability to do a particular type of work. The claimant's physician, when she first absented herself from work, indicated that the claimant could return to work in September, 1951. Although the employer's physician indicated that the claimant should be able to return to work on or about July 23, the employer continued to pay the claimant her full salary until her termination on August 6, and the claimant would have continued entitled to receive her salary for an extended period if she remained disabled. Although the claimant's physician advised her to cease entirely the type of work she was doing, she did not inform the employer of this advice nor did she make any attempt to secure other employment with the employer. There is some evidence in the record that the claimant's condition was not entirely attributable to the type of work which she had been performing but there is no indication that the claimant's health would have been impaired by performing other duties which the employer has available and for which the employer would have considered the claimant when she was able to work. Considering the claimant's lack of experience other than as a telephone operator, it would appear that any work which she might be able to obtain from her employer would have been as suitable as any which she might obtain with any new employer. From a consideration of all the facts, we conclude that the mere thought of returning to work for this employer at some future date was not sufficiently detrimental to the claimant's health to constitute good cause for severing her employment with the employer (Benefit Decision No. 5034).

DECISION

The decision of the Referee is reversed. The claimant is subject to five weeks' disqualification under the provisions of Section 58(a)(1) of the Act /now section 1256 of the code/. The period of disqualification shall commence when the claimant first registers for work under conditions meeting the availability requirements of Section 57(c) of the Act /now section 1253(c) of the code/ subject to the provisions of Section 58(b) of the Act /now section 1260 of the code/.

Sacramento, California, February 1, 1952.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

EDWARD CAIN

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5851 is hereby designated as Precedent Decision No. P-B-287.

Sacramento, California, April 6, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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